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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HANIL DEVELOPMENT, INC.,

Plaintiff and Respondent,

v.

EDWARD AHN et al.,

Defendant, Cross-complainant and  
Appellant;

HANIL ENGINEERING &  
CONSTRUCTION, CO., LTD., et al.,

Cross-defendants and Respondents.

B208403

(Los Angeles County  
Super. Ct. No. BC253701)

APPEAL from the judgment of the Superior Court of Los Angeles County.  
Marvin Lager, Judge; Joseph R. Kalin, Judge. Affirmed.

Evans & Associates and Patrick J. Evans, for Appellant Edward Ahn.

Allan E. Wilion, for Respondents Byoung Gil Choi, Keejune Huh, Joung Ki Kim  
and Dong Sup Huh.

Parker Shumaker Mills, David B. Parker, William K. Mills, and Justin D.  
Denlinger for Respondents Hanil Engineering & Construction Co. Ltd., Hanil Cement  
Co. Ltd., and Dong Sup Huh.

Lim, Ruger & Kim, Christopher Kim and Lisa J. Yang for Respondent Hanil  
Development, Inc.

Park & Lim and Heesok Park for Respondent Hanil Construction, Inc.

Edward Ahn appeals from the bifurcated judgment declaring that he owns only 25 percent of the shares of Hanil Development, Inc. and dismissing his cross-claims against multiple respondents.<sup>1</sup> We affirm.

## **FACTS AND PROCEEDINGS**

This appeal arises from litigation among three shareholders over control of a multi-purpose sports complex catering to Los Angeles's Korean-American community. In 1997, appellant Edward Ahn and his wife incorporated Hanil Development, Inc. (HDI). The same year, appellant's wife sold her shares to respondent Hanil Construction Co., Ltd. (hereafter Hanil Construction). HDI thereafter issued 150,000 new shares to appellant and Hanil Construction, thereby increasing to 200,000 the number of shares each owned.

Initially, HDI's principal asset was a corner lot on Wilshire Blvd in Los Angeles. In 1999, HDI contracted with Hanil (USA) Construction, Inc., a wholly-owned subsidiary of HDI's shareholder Hanil Construction, to build on the lot a multi-purpose sports complex called the Aroma project. During construction, HDI needed additional funding to complete the project. Consequently, Hanil Construction contributed \$2 million in additional capital to HDI around March 2000, for which Hanil Construction received 400,000 new shares of HDI stock. With the new shares, Hanil Construction became a 75 percent owner of HDI. Hanil Construction later sold 200,000 of its shares to a corporate affiliate, respondent Hanil Cement Manufacturing Co., Ltd. (We hereafter refer to the two companies as Hanil.)

In 2001, HDI sued appellant for breach of fiduciary duty and declaratory relief. The substance of that complaint is not before us and the complaint itself is pertinent only

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<sup>1</sup> The respondents are: Hanil Engineering & Construction, Co. Ltd.; Hanil Cement Manufacturing Co., Ltd.; Byoung Gil Choi; Joung Ki Kim; Keejune Huh; and, Dong Sup Huh. Our analysis focuses on the corporate respondents. Our resolution of this appeal does not require us to discuss the roles the individual respondents played in underlying events.

because appellant responded with a cross-complaint that underlies this appeal. In the cross-complaint, appellant and his wife alleged causes of action for themselves and derivative causes of action on HDI's behalf.

Trial of the cross-complaint was bifurcated. In the first phase in 2003, the court confirmed Hanil's 75 percent ownership of HDI.<sup>2</sup> In its statement of decision, the court found HDI's shareholders, which included appellant, consented to the issuance of the 400,000 new shares to Hanil Construction. The court additionally found that the stock issuance was fair, just, and reasonable to HDI.

The case continued, moving toward trial of the surviving portions of appellant's cross-complaint, which pretrial proceedings considerably winnowed by eliminating the derivative claims. The cross-complaint's derivative claims for HDI related to Hanil Construction (USA)'s delays and cost overruns in building the Aroma project. In March 2007, HDI's board of directors appointed a committee of directors, called the Special Litigation Committee, to investigate the claims. Following the committee's investigation, the committee recommended that HDI settle and dismiss the claims. Accepting the recommendation, HDI's board of directors moved to dismiss appellant's causes of action for breach of fiduciary duties, conversion, negligence, breach of contract, and accounting, to the extent they embodied derivative claims. In return for the dismissals, Hanil Construction (USA) paid or credited HDI \$201,000 for not having kept its contractor's license current during the entire construction project. The trial court granted HDI's motion to dismiss appellant's derivative claims.

The case proceeded to trial on appellant's cause of action for breach of fiduciary duty. Appellant alleged the individual respondents, who purportedly were on Hanil's

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<sup>2</sup> The court's bifurcation order assigned to the first phase of trial resolution of the claims raised by paragraph 158h of appellant's cross complaint. That paragraph alleged: "Cross-Complainants contend, and said Cross-Defendants, and each of them deny, that: [] The issuance of 400,000 shares of stock to CROSS-Defendant [Hanil Construction] for \$2 million dollars, sometime in March, 2000, is invalid and void *ab initio* as the issuance was not authorized by action of the board of directors; the shares were issued without sufficient consideration; and they were issued by Cross-Defendants' fraud."

payroll while they served as officers and directors for HDI, acted against HDI, principally by putting Hanil's interests ahead of HDI's. He also alleged the individual respondents looted HDI's corporate coffers by awarding themselves excessive salaries and stealing money from HDI. At the close of appellant's evidence, the court granted nonsuit for respondents. Appellant's brief does not discuss respondents' arguments in support of their nonsuit motion or the court's reasons for granting the motion, which the court discussed in its 52-page statement of decision. All of appellant's causes of action having either been settled or dismissed, the court entered judgment for respondents. This appeal followed.

## **DISCUSSION**

### *A. Ownership of HDI's Stock*

Appellant contends the court erred in holding he owned only 25 percent of HDI's stock. In appellant's view, he rightfully owns 50 percent. We review the court's factual findings for substantial evidence. (*SFPP, L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.) The trial court issued a 17-page statement of decision after the first phase of the bifurcated trial addressing ownership of the stock. Its statement included a detailed recitation of the court's factual findings and explained its reasons for concluding appellant owned only 25 percent of HDI's stock. The statement discussed appellant's vision for developing a multi-sports complex catering to Los Angeles's Korean-American community and described the project's groundbreaking. It discussed the participants in the project and their relationships. It described the project's financial setbacks during construction. It explained HDI's need for additional capital, and a series of meetings among HDI's shareholders to solve those financial difficulties. And finally, it discussed Hanil Construction's \$2 million capital contribution in return for receiving additional shares in HDI. Summarizing its findings, the court stated:

"It is the court's determination that HDI sold additional shares such that Hanil Construction Co. Ltd (later with Hanil Cement Co.) acquired 75% of the

outstanding corporate stock. It did so upon the consent of 100% of the [HDI] shareholders. The consent of the objecting shareholder – Dr. Ahn – is confirmed in writing. There was no bad faith involved in the transaction. Further, the sale was authorized by the HDI Board of Directors. Dr. Ahn and Chairman Huh agreed to the transaction at Dr. Ahn’s home, and in the presence of Mrs. Ahn. She voiced no objection to the meeting or the proposed transaction. The interests of each director were known by the others. The transaction was fair, just and reasonable to the corporation. There was no fraud or breach of fiduciary duty.”

Fundamental appellate rules obligate appellant to discuss the evidence supporting the court’s findings. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Appellant disagrees with the court’s findings. He does not, however, show they lack substantial support in the record. He does not even identify those findings, let alone discuss them. Instead, he ignores them, leaving us to tease them out of the record, which we did in order to set out our summary above. Appellant’s failure to observe fundamental rules of appellate practice waives his claim on appeal. (*Ibid.*) We therefore pass on any further discussion of his contention that the court erred in concluding he owned 25 percent of HDI’s stock.

#### *B. Derivative Claims and the Special Litigation Committee*

HDI’s board of directors established a special litigation committee to investigate appellant’s derivative claims for delays and cost overruns by Hanil Construction (USA) during construction of the Aroma project. The committee recommended that HDI dismiss the derivative claims. The board accepted the recommendation, and approved a settlement valued at \$201,000. The court affirmed the dismissals. The dismissals rested on the law’s recognition that a corporation may, after adequate investigation by independent directors, dismiss claims that a shareholder brings on a corporation’s behalf. (See *Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 182-183, 185-187.)

The court’s statement of decision in 2008 accompanying its final judgment contained its findings upholding the dismissals. The court set out the relevant finding in five pages of its statement of decision, concluding that most of the facts underlying the motion to dismiss were “undisputed.” The court found the special litigation committee

consisted of three newly elected directors to HDI's board who had no interest or role in the events at issue in the litigation. The court further found that the committee retained outside legal counsel who, with the committee, conducted a "thorough investigation" of the derivative claims. The court also found that appellant failed to cooperate with the board which had afforded appellant an opportunity to present facts in opposition to the contemplated settlement. The investigation culminated in a two-day mediation with a retired superior court judge. HDI thereafter dismissed the claims in return for \$201,000 and the right of indemnification against Hanil Construction (USA) for any construction defects in the project.

Appellant contends the trial court erred in allowing HDI to dismiss the derivative claims because the special litigation committee was not independent, an error the court compounded, according to appellant, with its refusal to allow appellant to reopen discovery to seek evidence of the committee's lack of independence. According to appellant, the committee was merely a "mouthpiece" for Hanil. Appellant's contention fails, however, because he does not discuss the court's findings, let alone show how the record does not support them. (*Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246 [contention waived on appeal for failure to follow appellate rules].)

Appellant also contends the court erred because the court's approval of the dismissals was procedurally improper. Appellant asserts that the law permits a trial court to adjudicate only by way of a motion for summary judgment, judgment on the pleadings, or trial, the affirmative defense that a corporation properly dismissed a derivative claim in reliance on a special litigation committee. Appellant contends a corporation may not dispose of derivative claims by a motion to dismiss. In support, he cites *Finley v. Superior Court* (2000) 80 Cal.App.4th 1152. His reliance on that decision is misplaced because it does not say what appellant claims it holds. Its holding rejected a contention that the defense is available only by pretrial motion. (*Id.* at p. 1162 ["We know of no case holding the defense cannot be raised at trial."].) It did not hold, contrary to appellant's contention, that summary judgment, judgment on the pleadings, or trial are the only means of adjudicating the defense.

Appellant also cites *Will v. Engebretson & Co.* (1989) 213 Cal.App.3d 1033, 1040-1043. (*Will*). The appellate court in *Will* expressly acknowledged that a corporation has many procedural avenues to pursue if it concludes that a derivative lawsuit should be terminated. The court suggested demurrer, judgment on the pleadings or summary judgment, but before its list of alternatives, the court stated: “The [special litigation] committee may decide that the suit should be dismissed and, if it does, the corporation may make a motion in the trial court to dismiss the suit.” (*Id.* at pp. 1040-1041.) Generally of course, a plaintiff may dismiss a previously filed suit (e.g. Code. Civ. Proc., § 581) and in this regard the corporation, in whose name the derivative action has been filed, has authority equivalent to the plaintiff’s to act in the corporation’s best interests. (*Will, supra*, at p. 1040.)<sup>3</sup>

As for the court’s denial of appellant’s motion to reopen discovery to pursue evidence about the committee’s purported lack of independence, appellant fails to show the court abused its discretion by denying his motion. (Code. Civ. Proc., § 2024.050, subd. (b) [motion to reopen discovery committed to trial court’s discretion].) Appellant asserts that reopening discovery would not have delayed the start of the second phase of trial, but trial delay is only one of several statutory factors the court may consider in ruling on a motion to reopen discovery. (See Code. Civ. Proc., § 2024.050, subd. (b)(1), (4).) Because appellant does not address the role those other factors, such as the necessity of the proposed discovery (b)(1) and appellant’s diligence (b)(2), may have played in the court’s analysis, appellants cannot show the court abused its discretion.

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<sup>3</sup> In *Will*, the court held that granting summary judgment based on the special litigation committee defense is error if triable issues of material fact exist regarding the committee’s independence and the adequacy of its investigation. This, of course, is an application of well accepted summary judgment principles. The short answer to appellant’s argument is that he has not discussed the standard of review for this court in considering an order of dismissal in this setting. More fundamentally, even if we were to treat the motion as a mislabeled motion for summary judgment, appellant has not discussed the facts in the record and therefore cannot show triable issues of material facts exist.

C. *Nonsuit on Breach of Fiduciary Duty Claim*

At the close of appellant's evidence, the court entered judgment of nonsuit on appellant's claim for breach of fiduciary duty. Appellant contends the court erred because, he asserts, the record contained sufficient evidence that the majority shareholders, respondents Hanil Construction Co. Ltd. and Hanil Cement Manufacturing Co., Ltd., had not disclosed to appellant all of HDI's revenue. Their purported hiding of HDI's revenue underlay appellant's claim for breach of fiduciary duty to him as a minority shareholder. Appellant does not discuss, let alone refute, the court's reasons for entering a nonsuit. It follows that appellant cannot show the trial court erred if he does not address the court's findings. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [appellant bears burden of showing trial court erred]; *Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) Accordingly, we are entitled to pass on his point as waived.

Nevertheless, even if appellant did not waive his contention on appeal, he does not present a cogent description of error by the court. He asserts, for example that inconsistencies, which he does not identify, between HDI's tax returns and financial statements reveals millions of dollars in revenue hidden from him. He names the tax returns and financial statements by trial exhibit numbers, but leaves it at that. We are not accountants and it is not our role to comb through financial evidence to find the inconsistencies that he claims exists. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 877-878; *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738.) He also asserts the testimony of HDI's officers, directors, and employees revealed hidden revenue. It is not enough, however, for appellant to identify witnesses by name and assert they confirm his assertions; he must discuss their testimony supported by citations to the record and demonstrate how the testimony reveals hidden revenue to which he is entitled.

Moving on from his broad and unsupported assertions that tax returns, financial statements and HDI witnesses revealed hidden revenue, appellant bears down on selected



evidence that he asserts shows nonsuit was error. He notes that witness Karen Klaess, whom he identifies as a “spa expert,” testified that HDI was hiding revenue based on a rule of thumb she had developed for the spa industry about the ratio between the amount of massage oil a spa uses and the number of clients it serves. Appellant also cites the testimony of Howard Park, a purported real estate investor, who had considered purchasing the Aroma sports complex. Park had calculated Aroma earned \$4 million dollars a year in profit based on the price he had been willing to pay to buy Aroma. Appellant also points to the testimony of Hugh Saddington, who testified HDI did not adhere to generally accepted accounting principles in how it recorded in its corporate books the \$10 million dollar’s worth of spa memberships that it sold.<sup>4</sup> Appellant’s selected bits of testimonial evidence fall short, however, of demonstrating the trial court erred. Nonsuit is proper if no rational trier of fact, after crediting all evidence in

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<sup>4</sup> Appellant also points to HDI’s purportedly secret profit and loss statement in support of his claim that the majority shareholders were hiding revenue. The court ruled the statement was inadmissible. We review the trial court’s ruling excluding the statement for abuse of discretion. (*Miyamoto v. Department of Motor Vehicles* (2009) 176 Cal.App.4th 1210, 1217.) Appellant does not discuss the ruling other than to note its effect in keeping the statement out of evidence. The closest he comes to tying his assertion to facts in the record is his citation to two pages in the reporter’s transcript involving denial of his *motion for reconsideration*, not the original motion itself – and even then, his reference to the motion for reconsideration is only in passing. Thus, appellant’s discussion of the profit and loss statement in his appellate brief does not show the trial court abused its discretion in excluding it from evidence.

In the same vein of supposedly wrongful exclusion of evidence, appellant contends the court erred in excluding the “layperson expert” testimony of Howard Park. Appellant’s assertion appears to be that the court accepted Park’s testimony in his capacity as a layperson, but not as an expert. According to appellant, the court refused to let Park testify as an expert about the “meaning of the financial and other information Mr. Park had gleaned from the due diligence” he had performed when he had contemplated buying the Aroma complex. We review the court’s ruling for abuse of discretion. (*City and County of San Francisco v. Coyne* (2008) 168 Cal.App.4th 1515, 1523 [exclusion of expert testimony reviewed for abuse of discretion]; *People v. Wells* (2004) 118 Cal.App.4th 179, 187.) Appellant’s discussion of Park’s expert testimony does not, however, demonstrate the court abused its discretion because appellant’s brief does not offer cogent argument on the point supported by citations to the record and authority.

appellant's favor, could find for appellant. (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214; *Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 509.) The evidence appellant cites in support of his claim for breach of fiduciary duty is too thin and too conclusory to allow a trier of fact to find that respondents breached any fiduciary duty they owed to appellant. Nonsuit was therefore not error.

*D. Denial of Accounting*

Appellant sought appointment of a referee to perform an accounting of HDI's finances. The accounting's seeming purpose was to address HDI's income from the lifetime and ten-year spa memberships it sold. The court denied appellant's request. Other than to express his disapproval, appellant does not explain what, if any, was the court's legal error. He cites two decisions from the first decade of the 20th Century holding that a fiduciary's duties may include providing an accounting, but appellant cites no legal authority establishing the circumstances that trigger the obligation to discharge that duty. Moreover, appellant does not show, or even discuss, that the court ignored those unstated circumstances. We therefore pass on his contention for his failure to present a cogent argument supported by citation to the record and legal authority. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.)

*E. Purportedly Untried Matters Contained Within Statement of Decision*

Appellant contends the court's statement of decision accompanying its final judgment contained three factual findings that the parties had not tried. First, the statement finds appellant's ownership of HDI fell from 25 percent to 9 percent based on events after appellant filed his cross-complaint. Second, the statement concluded that appellant turned down a real estate investor's offer of \$6.5 million for appellant's stock in HDI. And third, appellant asserts the court ruled it was not going to try appellant's claims against respondents for their poor management of HDI, but then swept up and

dismissed appellant's mismanagements claims when the court dismissed appellant's derivative claims for construction delays and costs overruns.<sup>5</sup>

Our role is not to flyspeck the trial court's factual findings in its exhaustive 52-page statement of decision. Appellant does not cite where in the record he objected to the three particular findings about which he complains and how they were not supported by the record. To the contrary, he excuses his failure to identify his objections by stating that trying to recount his objections "would exceed the word count [for a brief] were it to repeat all the objections." Appellant does not need to identify all of his objections, just the particular ones he wants us to address. (See *McBride v. California Bd. of Accountancy* (2005) 130 Cal.App.4th 518, 527; *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379-1380.) Because he fails to show that the trial court wrongfully disregarded his objections, if any, to the three factual findings, his point is waived on appeal.

### **DISPOSITION**

The judgment is affirmed. Respondents to recover their costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

LICHTMAN, J.\*

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<sup>5</sup> Appellant contends the court erred in dismissing the mismanagement claims. His brief does not describe the purported mismanagement with any specificity. He told the court that mismanagement was his shorthand for the following: "It's been called mismanagement. I'm not sure what the overall term is, but things like nepotism, the majority shareholder having its – its, you know, nephew work in the company . . . year after year when the guy isn't even qualified." Because appellant does not articulate a cogent explanation of the court's error, we deem his contention to be waived.

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.